

104TH CONGRESS
1ST SESSION

H. R. 955

To establish legal standards and procedures for product liability litigation,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1995

Mr. HYDE introduced the following bill; which was referred to the Committee
on the Judiciary

A BILL

To establish legal standards and procedures for product
liability litigation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Common Sense Prod-
5 uct Liability Reform Act of 1995”.

6 **SEC. 2. FEDERAL CAUSE OF ACTION PRECLUDED.**

7 This Act does not provide the district courts of the
8 United States with jurisdiction over product liability ac-
9 tions based on section 1331 or 1337 of title 28, United
10 States Code.

1 **SEC. 3. APPLICABILITY AND PREEMPTION.**

2 (a) PREEMPTION.—This Act governs any product li-
3 ability action brought in any State or Federal court
4 against a manufacturer or product seller, on any theory
5 for harm caused by a product. A product liability action
6 brought against a manufacturer or product seller for com-
7 mercial loss shall be governed only by applicable commer-
8 cial or contract law.

9 (b) RELATIONSHIP TO STATE LAW.—This Act super-
10 sedes State law only to the extent that State law applies
11 to an issue covered by this Act. Any issue that is not gov-
12 erned by this Act shall be governed by otherwise applicable
13 State or Federal law.

14 (c) APPLICABILITY.—Nothing in this Act shall be
15 construed to—

16 (1) waive or affect any defense of sovereign im-
17 munity asserted by any State under any law;

18 (2) supersede any Federal law, except the Fed-
19 eral Employers Compensation Act and the
20 Longshore and Harbor Workers' Compensation Act;

21 (3) waive or affect any defense of sovereign im-
22 munity asserted by the United States;

23 (4) affect the applicability of any provision of
24 chapter 97 of title 28, United States Code;

1 (5) preempt State choice-of-law rules with re-
2 spect to claims brought by a foreign nation or a citi-
3 zen of a foreign nation;

4 (6) affect the right of any court to transfer
5 venue or to apply the law of a foreign nation or to
6 dismiss a claim of a foreign nation or of a citizen
7 of a foreign nation on the ground of inconvenient
8 forum; or

9 (7) supersede any Federal law that prescribes a
10 specific regimen for punitive damages.

11 **SEC. 4. LIABILITY RULES APPLICABLE TO PRODUCT**
12 **SELLERS.**

13 (a) GENERAL RULE.—Except as provided in sub-
14 section (b), in any product liability action, a product seller
15 other than a manufacturer shall be liable to a claimant
16 only if the claimant establishes that—

17 (1)(A) the product which allegedly caused the
18 harm complained of was sold by the product seller;
19 (B) the product seller failed to exercise reasonable
20 care with respect to the product; and (C) such fail-
21 ure to exercise reasonable care was a proximate
22 cause of the claimant's harm; or

23 (2)(A) the product seller made an express war-
24 ranty applicable to the product which allegedly
25 caused the harm complained of, independent of any

1 express warranty made by a manufacturer as to the
2 same product; (B) the product failed to conform to
3 the warranty; and (C) the failure of the product to
4 conform to the warranty caused the claimant's
5 harm; or

6 (3) the product seller engaged in intentional
7 wrongdoing as determined under applicable State
8 law and such intentional wrongdoing was a proxi-
9 mate cause of the harm complained of by the
10 claimant.

11 For purposes of subparagraph (1)(B), a product seller
12 shall not be considered to have failed to exercise reason-
13 able care with respect to the product based upon an al-
14 leged failure to inspect a product where there was no rea-
15 sonable opportunity to inspect the product in a manner
16 which would, in the exercise of reasonable care, have re-
17 vealed the aspect of the product which allegedly caused
18 the claimant's harm.

19 (b) EXCEPTION.—In a product liability action, a
20 product seller shall be liable for harm to the claimant
21 caused by such product as if the product seller were the
22 manufacturer of such product if—

23 (1) the manufacturer is not subject to service of
24 process under the laws of any State in which the ac-
25 tion might have been brought; or

1 (2) the court determines that the claimant
2 would be unable to enforce a judgment against the
3 manufacturer.

4 **SEC. 5. DEFENSE BASED ON CLAIMANT'S USE OF INTOXI-**
5 **CATING ALCOHOL OR DRUGS.**

6 (a) GENERAL RULE.—In any product liability action,
7 it shall be a complete defense to such action if—

8 (1) the claimant was intoxicated or was under
9 the influence of intoxicating alcohol or any drug; and

10 (2) the claimant, as a result of the influence of
11 the alcohol or drug, was more than 50 percent re-
12 sponsible for the accident or event which resulted in
13 such claimant's harm.

14 (b) CONSTRUCTION.—For purposes of this section—

15 (1) the determination of whether a person was
16 intoxicated or was under the influence of intoxicat-
17 ing alcohol or any drug shall be made pursuant to
18 applicable State law; and

19 (2) the term “drug” means any controlled sub-
20 stance as defined in the Controlled Substances Act
21 (21 U.S.C. 802(6)) that has been taken by the
22 claimant other than in accordance with the terms of
23 a lawfully issued prescription.

1 **SEC. 6. SEVERAL LIABILITY FOR NONECONOMIC LOSS.**

2 In any product liability action, the liability of each
3 defendant for noneconomic loss shall be several only and
4 shall not be joint. Each defendant shall be liable only for
5 the amount of noneconomic loss attributable to such de-
6 fendant in direct proportion to such defendant's propor-
7 tionate share of fault or responsibility for the claimant's
8 harm, as determined by the trier of fact.

9 **SEC. 7. STATUTE OF REPOSE.**

10 A product liability action shall be barred unless the
11 complaint is served and filed within 15 years after the
12 time of delivery of the product. For the purposes of this
13 section, the term "time of delivery" means the time when
14 a product is delivered to its first purchaser or lessee who
15 was not involved in the business of manufacturing or sell-
16 ing such product or using it as a component part of an-
17 other product to be sold. This section applies only if the
18 harm caused by a product did not include chronic illness
19 and only to claims arising after the date of enactment of
20 this Act. This section does not affect the provisions of the
21 General Aviation Revitalization Act of 1994.

22 **SEC. 8. PUNITIVE DAMAGES.**

23 (a) GENERAL RULE.—Punitive damages may, to the
24 extent permitted by applicable State law, be awarded in
25 any product liability action in any Federal or State court
26 against a defendant if the claimant establishes by clear

1 and convincing evidence that the harm suffered was result
2 of conduct specifically intended to cause harm or conduct
3 manifesting a conscious, flagrant indifference to the safety
4 of those persons who might be harmed by the product for
5 which the action was brought.

6 (b) PROPORTIONAL AWARDS.—The amount of puni-
7 tive damages that may be awarded for a claim in any prod-
8 uct liability action subject to this Act shall not exceed 3
9 times the amount of damages awarded to the claimant for
10 the economic loss on which such claim is based, or
11 \$250,000, whichever is greater. This provision shall be ap-
12 plied by the court and shall not be disclosed to the jury.

13 (c) APPLICABILITY AND PREEMPTION.—Except as
14 provided in section 2, this section shall apply to any prod-
15 uct liability action brought in any Federal or State court
16 on any theory where punitive damages are sought. This
17 section does not create a cause of action for punitive dam-
18 ages in any jurisdiction that does not authorize such ac-
19 tions.

20 (d) BIFURCATION AT EITHER PARTY'S REQUEST.—
21 At the request of either party, the trier of fact shall con-
22 sider in a separate proceeding whether punitive damages
23 are to be awarded and the amount of such award. If a
24 separate proceeding is requested, evidence relevant only to
25 the claim of punitive damages, as determined by applicable

1 State law, shall be inadmissible in any proceeding to deter-
2 mine whether compensatory damages are to be awarded.

3 **SEC. 9. DEFINITIONS.**

4 As used in this Act:

5 (1) The term “claimant” means any person who
6 brings a product liability action and any person on
7 whose behalf such an action is brought. If such an
8 action is brought through or on behalf of an estate,
9 the term includes the claimant’s decedent. If such
10 action is brought through or on behalf of a minor
11 or incompetent, the term includes the claimant’s
12 legal guardian.

13 (2) The term “clear and convincing evidence”
14 means that measure or degree of proof that will
15 produce in the mind of the trier of fact a firm belief
16 or conviction as to the truth of the allegations
17 sought to be established. The level of proof required
18 to satisfy such standard is more than that required
19 under preponderance of the evidence, but less than
20 that required for proof beyond a reasonable doubt.

21 (3) The term “commercial loss” means any loss
22 incurred in the course of the ongoing business enter-
23 prise consisting of providing goods or services for
24 compensation.

1 (4) The term “economic loss” means any pecu-
2 niary loss resulting from harm (including the loss of
3 earnings, medical expense loss, replacement services
4 loss, loss due to death, burial costs, and loss of busi-
5 ness or employment opportunities) to the extent re-
6 covery for such loss is allowed under applicable State
7 law.

8 (5) The term “harm” means any physical in-
9 jury, illness, disease, or death caused by a product.
10 The term does not include commercial loss or loss or
11 damage to a product itself.

12 (6) The term “manufacturer” means—

13 (A) any person who is engaged in a busi-
14 ness to produce, create, make, or construct any
15 product (or component part of a product) and
16 who (i) designs or formulates the product (or
17 component part of the product), (ii) has en-
18 gaged another person to design or formulate
19 the product (or component part of the product),
20 or (iii) uses the design or formulation of the
21 product developed by another person;

22 (B) a product seller, but only with respect
23 to those aspects of a product (or component
24 part of a product) which are created or affected
25 when, before placing the product in the stream

1 of commerce, the product seller produces, cre-
2 ates, makes, or constructs and designs or for-
3 mulates, or has engaged another person to de-
4 sign or formulate, an aspect of a product (or
5 component part of a product) made by another;
6 or

7 (C) any product seller not described in
8 subparagraph (B) which holds itself out as a
9 manufacturer to the user of the product.

10 (7) The term “nominal damages” means dam-
11 ages not more than \$500.

12 (8) The term “noneconomic loss” means subjec-
13 tive, nonmonetary loss resulting from harm, includ-
14 ing pain, suffering, inconvenience, mental suffering,
15 emotional distress, loss of society and companion-
16 ship, loss of consortium, injury to reputation, and
17 humiliation.

18 (9) The term “person” means any individual,
19 corporation, company, association, firm, partnership,
20 society, joint stock company, or any other entity (in-
21 cluding any governmental entity).

22 (10)(A) The term “product” means any object,
23 substance, mixture, or raw material in a gaseous,
24 liquid, or solid state—

1 (i) which is capable of delivery itself or as
2 an assembled whole, in a mixed or combined
3 state, or as a component part or ingredient;

4 (ii) which is produced for introduction into
5 trade or commerce;

6 (iii) which has intrinsic economic value;
7 and

8 (iv) which is intended for sale or lease to
9 persons for commercial or personal use.

10 (B) The term does not include—

11 (i) human tissue, human organs,
12 human blood, and human blood products;
13 or

14 (ii) electricity, water delivered by a
15 utility, natural gas, or steam.

16 (11) The term “product liability action” means
17 a civil action brought on any theory for harm caused
18 by a product.

19 (12) The term “product seller” means a person
20 who, in the course of a business conducted for that
21 purpose, sells, distributes, leases, prepares, blends,
22 packages, labels, or otherwise is involved in placing
23 a product in the stream of commerce, or who in-
24 stalls, repairs, or maintains the harm-causing aspect
25 of a product. The term does not include—

1 (A) a seller or lessor of real property;

2 (B) a provider of professional services in
3 any case in which the sale or use of a product
4 is incidental to the transaction and the essence
5 of the transaction is the furnishing of judg-
6 ment, skill, or services; or

7 (C) any person who—

8 (i) acts in only a financial capacity
9 with respect to the sale of a product; or

10 (ii) leases a product under a lease ar-
11 rangement in which the selection, posses-
12 sion, maintenance, and operation of the
13 product are controlled by a person other
14 than the lessor.

15 (13) The term “punitive damages” means dam-
16 ages awarded against any person or entity to punish
17 or deter such person or entity, or others, from en-
18 gaging in similar behavior in the future.

19 (14) The term “State” means any State of the
20 United States, the District of Columbia, Puerto
21 Rico, the Northern Mariana Island, the Virgin Is-
22 lands, Guam, American Samoa, and any other terri-
23 tory or possession of the United States, or any polit-
24 ical subdivision of any of the foregoing.

1 **SEC. 10. EFFECTIVE DATE.**

2 This Act shall apply with respect to product liability
3 actions which are commenced after the date of the enact-
4 ment of this Act.

